

4 Official Opinions of the Compliance Board 114 (2005)

**MEETING – GATHERING AT WHICH PUBLIC BUSINESS
WAS DISCUSSED BUT WITH NO QUORUM PRESENT,
HELD NOT TO BE A MEETING – EXCEPTIONS
PERMITTING CLOSED SESSIONS – LEGAL ADVICE,
§10-508(A)(7) – PRESENTATION ON COMPLIANCE
WITH OPEN MEETINGS ACT, HELD WITHIN EXCEPTION
– INVESTMENT OF PUBLIC FUNDS, §10-508(A)(5) –
PRELIMINARY DISCUSSION OF POSSIBLE PROJECT FOR
REVENUE AUTHORITY SUPPORT, INSUFFICIENT
INFORMATION FOR OPINION TO BE GIVEN – CLOSED
SESSION PROCEDURES – WRITTEN STATEMENT -
REITERATING STATUTORY AUTHORITY VIOLATED ACT
– MINUTES – CLOSED SESSION STATEMENT –
INADEQUATE DESCRIPTION VIOLATED ACT**

January 11, 2005

*Nicholas Horrock, Managing Editor
Timothy W. Maier, Maryland Editor
The Journal Newspapers*

The Open Meetings Compliance Board has considered your complaint suggesting that the Revenue Authority of Prince George's County may have violated the Open Meetings Act in connection with meetings held on November 2 and 3, 2004.

For the reasons explained below, we find that no violation occurred in connection with the November 2 session, because it did not involve a meeting subject to the Open Meetings Act. With respect to the November 3 meeting, although we are unable to express an opinion whether the Revenue Authority justifiably invoked the Act's exception related to the investment of public funds, we find that the meeting was permissibly closed for the Revenue Authority to obtain legal advice about the Open Meetings Act. However, we further find that the Revenue Authority violated the procedural requirements of the Act in connection with the November 3 closed session by failing to make certain disclosures about the session in the manner required by the Act.

I

Complaint and Response**A. November 2 Session**

The complaint alleged that, on November 2, 2004, the Revenue Authority held a meeting that was not publicly announced. The complaint noted that *The Journal* has asked for notes and details concerning this meeting, but, as of November 5, the date of your complaint, information had not been provided. According to your sources, the Chairman and Vice Chairman met with the Revenue Authority's executive director. One source believes that an additional member of the Revenue Authority also attended the meeting. If so, then three of the Revenue Authority's seven members were involved.

In a timely response filed on behalf of the Revenue Authority, David S. Whiteacre, the Revenue Authority's general counsel, asserted that no meeting of the Revenue Authority occurred on November 2. No meeting had been scheduled for that date, nor did a quorum of the Revenue Authority, defined by local law as four members, assemble then. While the executive director did meet with three members of the Revenue Authority for approximately 90 minutes, according to the response, "[t]here was neither an attempt to conduct, nor the actual transaction of, any [Revenue Authority] business."

B. November 3 Session

The complaint stated that, at the Revenue Authority's meeting on November 3, Ms. Anna Bailey, a reporter with *The Journal*, was required to leave. Ms. Bailey asked for notes from the meeting and was told they would not be available until November 17. According to the complaint, the closed session lasted 90 minutes, and sources indicated that part of the closed meeting involved discussions about the Open Meetings Act. *The Journal* believes that several topics discussed during the course of the closed meeting should have been considered in public session.¹

¹ The complaint also indicated that, during the course of an earlier meeting, a member of the Revenue Authority threatened to close a meeting so *The Journal* "would not report what the board discussed." When the Revenue Authority's legal counsel advised the member that he could not do so, the member threatened to go to each member and hold private meetings to discuss board business. If this intemperate remark was made, it reflects poor judgment. Nevertheless, as explained in Part II.A below, as long as a quorum is not present, discussions among individual members of a public body about public business are not subject to the Open Meetings Act.

In closing, the complaint requested an "immediate investigation into whether county agencies have violated the Open Meetings Act and a full report of secret proceedings." The Compliance Board is not an investigative body and, under the Act, our authority is limited

The Revenue Authority's response indicated that, on November 3, a motion was made to enter into a closed session to obtain legal advice pursuant to §10-508(a)(7)² and to consider the investment of public funds pursuant to §10-508(a)(5). The motion received a second and was unanimously approved. According to the response, the closed session started with the Revenue Authority's general counsel providing legal advice concerning the Open Meetings Act. Discussion then turned to investment of Revenue Authority funds. During the latter discussion, the Revenue Authority considered two motions, the first to allow for an informal presentation on and discussion of a potential investment project under consideration, and the second a substitute motion to postpone the presentation and discussion. Neither motion passed. According to the minutes, the closed session lasted one hour.

Included with the Revenue Authority's response were the following documents: a copy of a notice posted on the conference room door during the course of the closed session on November 3; a document captioned "minutes of a closed session," which appears to be a written statement prepared in connection with the closed session pursuant to §10-508(d)(2)(ii); a separate document captioned "motion for a closed session," which appears to reflect the vote in favor of a closed session; minutes of both the open and closed session of that date; and sealed notes prepared during the course of that session.

II

Discussion

A. November 2 Session

A gathering is a "meeting" for purposes of the Open Meetings Act only if a quorum of a public body convenes for the consideration or transaction of public business. §10-502(g). Unless otherwise provided by law, a quorum is a simple majority of the members of the public body. §10-502(k).

The Revenue Authority has seven members, five drawn from the public and two ex officio. §21A-115(a) of the Prince George's County Code. Four members of the Revenue Authority constitute a quorum. §21A-120(e). The session on November

to considering compliance with the Act by public bodies within the context of a specific complaint.

² Except as otherwise indicated, all statutory citations are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

2, as described in both the complaint and response, clearly involved fewer than a quorum. Consequently, there was no meeting subject to the Open Meetings Act.

To be sure, had a Revenue Authority meeting been scheduled for November 2, even if a quorum ultimately did not attend, notice of the meeting would still have been required, because a quorum failure cannot be assumed at the time a meeting is scheduled. *See, e.g., Community and Labor United for Baltimore Charter Committee (CLUB) v. Baltimore City Board of Elections*, 377 Md. 183, 195, 832 A.2d 804 (2003); *see also 3 Official Opinions of the Maryland Open Meetings Compliance Board* 92, 95 (2001) (Opinion 01-4).³ In this case, however, there is no evidence that any Revenue Authority meeting was scheduled for November 2, and none in fact was held. Thus, we conclude that no violation occurred in connection with the November 2 session.

B. November 3 Session

1. Justification for closed session.

According to the response, during the November 3 closed session, the Revenue Authority's general counsel provided advice concerning the Open Meetings Act. A public body may meet in closed session pursuant to §10-508(a)(7), "to ... consult with counsel to obtain legal advice," for advice in connection with any statute governing its conduct, including the Open Meetings Act. 4 *OMCB Opinions* 58, 60 (2004). In this regard, there was no violation.

The Revenue Authority also closed the November 3 meeting under §10-508(a)(5), to address the investment of public funds. The discussion apparently touched somewhat generally on both the overall role of the Revenue Authority and a potential project for which an investment might ultimately be made. The investment issues were evidently not discussed in depth, however, because the pending motions (both of which failed) merely related to the timing of a substantive presentation. Nevertheless, even a preliminary discussion might be sufficiently related to a potential investment, and hence within the exception. Based on the Revenue Authority's response and the materials provided to us, we simply cannot tell whether the discussion was too general to fall within the cited exception or was sufficiently related to a concrete investment possibility as to justify invoking the exception. Thus, we express no opinion as to propriety of this aspect of the closed session.⁴

³ For brevity's sake, hereafter we shall cite our opinion volumes as *OMCB Opinions*.

⁴ The Open Meetings Act recognizes that the Compliance Board may be unable to resolve all or part of a complaint. §10-502.5(f)(2).

2. Disclosure requirements.

In accordance with §10-502.5(c)(2), the Revenue Authority provided, at our request, copies of the written statement prepared under §10-508(d)(2)(ii) in advance of the closed session, as well as minutes of the closed session. These minutes apparently were intended to address the subsequent reporting of a closed meeting in accordance with §10-509(c)(2).⁵ The written statement, prepared by the presiding officer, indicated that the purpose of the closed session was to “consult w/ legal counsel” and to “consider the investment of public funds.” As statutory authority for the closed session, the form included a line “Section 10-508(a)_____”; however, the specific citation was not filled in.

The Open Meetings Act requires that a written statement prepared in advance of a closed session reflect certain minimal information: “the reason for closing the meeting, including a citation of the authority under [§10-508], and a listing of the topics to be discussed.” §10-508(d)(2)(ii). We have long held that merely parroting the statutory basis under which a meeting may be closed violates the Act. 1 *OMCB Opinions* 23, 25-26 (1993) (Opinion 93-2).

In this case, the document submitted by the Revenue Authority failed to list the specific statutory basis under which the meeting was closed and provided no meaningful description of the reason for a closed session. Similarly, the minutes of the closed session failed to adequately reflect the basic information required under §10-509(c)(2). Although the minutes cited the applicable provisions of §10-508(a) on which the Revenue Authority relied, the topics recited merely echoed the statutory exceptions, *i.e.*, “to consult with counsel to obtain legal advice” and “to consider the investment of public funds.” While public bodies need not disclose detail that undermines the confidentiality permitted by law, saying nothing beyond the statutory language deprives the public of information to which it is entitled under the Act. Thus, we find that the Revenue Authority violated the Act’s record-keeping requirements in connection with the closed meeting held November 3, 2004.⁶

⁵ We have recognized the option of public bodies to satisfy the reporting requirements under §10-509(c)(2) by including the required information in the minutes of a open session held on the same date if the public is aware of the practice, recognizing that this practice makes the required information publicly available at an earlier time. *See, e.g.*, 3 *OMCB Opinions* 264, 270 (Opinion 03-4). The Revenue Authority produced separate, publicly available, minutes of the closed session of November 3, which achieved the same purpose.

⁶ The complaint also addressed the unavailability of certain notes in connection with meetings of the Revenue Authority. The Open Meetings Act does not address the right of the public to documents in connection with meetings of public bodies, other than the minutes of meetings and other documents required to be maintained under the Act. Access to other documents would be governed by the Public Information Act, §§10-611 through

III

Conclusion

A meeting of the Revenue Authority of Prince George's County was not scheduled for November 2, 2004, nor did a quorum actually convene for a meeting. An unannounced closed session on that date held by fewer than a quorum did not violate the Act. At its November 3 meeting, the Revenue Authority was entitled to conduct a closed session to obtain advice from its legal counsel about the Open Meetings Act. The record is insufficient for us to express an opinion regarding the second basis under which the session was closed, that is, whether the discussion fell within the exception allowing a closed meeting concerning the investment of public funds. We find that, in connection with its November 3 closed meeting, the Revenue Authority violated the procedural requirements of the Act by failing to adequately disclose information required under the Act.

OPEN MEETINGS COMPLIANCE BOARD

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10-628 of the State Government Article, Annotated Code of Maryland. See Office of the Attorney General, *Open Meetings Act Manual* p. 15 (5th ed. 2004). The Compliance Board's authority is limited to the interpretation of the Open Meetings Act.